

Tower Siting: Timeframes for Action



FCC Open Meeting
November 18, 2009



Good morning, Mr. Chairman and Commissioners.

Today we present to you a draft Declaratory Ruling that would establish timeframes for State and local authorities to decide applications requesting new facilities, or collocations on existing facilities, to provide wireless services.

Joining me at the table are Jane Jackson, Associate Chief of the Bureau; Jeffrey Steinberg, Deputy Chief of the Spectrum & Competition Policy Division in the Bureau; and Angie Kronenberg, Special Counsel in the Spectrum & Competition Policy Division. I would like to thank the Office of General Counsel for their valuable input on this matter.

I also would like to acknowledge the team in the Division that worked diligently on this item. Thank you to Jeff, Aaron Goldschmidt, Michael Rowan, and Angie. Angie will be presenting the item.

Good morning Mr. Chairman and Commissioners. The draft item before you today, if adopted, will help ensure that State and local review of tower siting applications does not impede the deployment of wireless networks. As a result, consumers will benefit because we expect that new wireless licensed services and mobile broadband services will be delivered more quickly.

Construction of Wireless Networks

- Approval by State and local governments typically required for new tower construction and collocation of wireless facilities.
- Significant increase in the number of collocations and new towers anticipated to enable roll-out of new services, including mobile broadband.



Both new tower constructions and collocations typically require approval by State or local government authorities, including zoning or other land use review.

We anticipate a significant increase in the number of collocations and new tower applications at the State and local level because of the build out of various new mobile wireless licenses, including AWS and 700 MHz licenses, and the expansion of mobile broadband networks.

As wireless providers expand their networks to include new licensed services and mobile broadband capabilities and seek State and local approvals to collocate their facilities or construct new towers, we do not want tower siting review to be an obstacle to deployment.

Statutory Framework

- Section 332(c)(7) of the Communications Act preserves State and local authority over the siting of wireless facilities.
- Under the statute, State and local authorities must decide applications in a reasonable period of time.

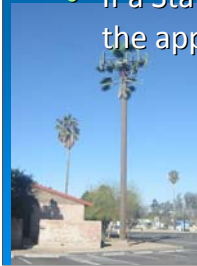


Section 332(c)(7) of the Communications Act provides general deference to State and local governments regarding the placement, construction, and modification of wireless facilities.

The Act requires that State and local governments decide siting applications within a reasonable period of time.

Statutory Framework, cont.

- Section 332(c)(7) also provides that State and local governments may not unreasonably discriminate among providers.
- If a State or local government fails to act on an application, the applicant may file suit in court.



Section 332(c)(7) also prohibits State and local governments from rendering siting decisions that unreasonably discriminate among providers or that prohibit or have the effect of prohibiting wireless services.

The Act permits applicants to commence court action within 30 days of a “final action or failure to act” by a State or local government on a wireless facility siting application.

Review of State and Local Processing

- Many States and localities currently process tower siting applications in a reasonable timeframe.
- In fact, a number of States have set timeframes for local zoning applications, including tower siting.

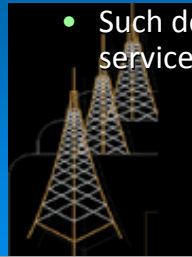


We have received significant input from wireless providers, States, and local jurisdictions concerning the tower siting approval process.

In many cases, State and local jurisdictions already are processing siting applications in a reasonable period of time. In fact, we found that a number of States have established timeframes for local zoning applications, including tower siting. For example, in Kentucky new tower applications must be processed within 60 days unless the applicant agrees to a different timeframe.

Delayed Processing Impedes Deployment

- Other jurisdictions, however, have delayed processing tower siting applications.
 - Based on the aggregated information in our record, there are numerous significant instances of delay.
- Such delay is problematic for the deployment of new licensed services, especially mobile broadband.



We also found in our record a number of instances of significant delay for tower siting applications. Data compiled by CTIA from its members show that in July 2008 there were more than 3,300 pending wireless siting applications. Approximately 760 of those applications had been pending final action for more than one year, and more than 180 had been awaiting final action for more than 3 years.

Almost 350 of the 760 applications that were pending for more than one year were requests to collocate on existing towers, and 135 of those collocation applications had been pending for more than three years.

In addition, the record contains evidence of individual wireless providers' experiences in the siting application process, demonstrating that such delays continue to occur and have been increasing.

These delays are problematic as consumers await the deployment of advanced wireless communications services, including mobile broadband services, in all geographic areas of the United States in a timely fashion.

Winners of recent spectrum auctions will need siting approvals in order to deploy their networks.

In the 700 MHz band, the Commission adopted stringent build out requirements precisely to ensure the rapid and widespread deployment of services over this spectrum. New licensees in that band will need timely approval of their network facilities from States and localities to construct their networks and meet their build out requirements.

Moreover, deployment of wireless facilities is vital to promoting public safety, including wireless 911 throughout the nation, as consumers increasingly rely upon their wireless devices as their primary method of communication.

Without a clear definition of a reasonable period of time for processing and the point at which a State or local government has failed to act on an application, applicants do not know when they can go to court to request relief.

Accordingly, based on the extensive aggregated information in our record, we recommend that the Commission establish timeframes for State and local review of tower siting applications.

While State and local governments' authority to determine local zoning and land use policies will be preserved, the timeframes will prevent unnecessary delays and provide applicants certainty about when they can go to court to seek relief.

Timeframes for Siting Applications

- Define “reasonable period of time” and “failure to act” in Section 332(c)(7) providing for State and local government review of tower applications within the following timeframes:
 - 90 days for collocations
 - 150 days for all other tower sitings
- These timeframes are similar to those already adopted in some States.



The draft Declaratory Ruling would establish timeframes for State and local processing of tower siting applications.

The record demonstrates that collocation applications can typically be processed by State and local governments within 90 days and new tower applications can usually be processed within 150 days.

Several State statutes already require application processing within these timeframes. For example, North Carolina has a time period of 90 days for processing collocation applications, and as mentioned earlier, Kentucky requires that new tower applications must be processed within 60 days, unless the applicant agrees to a different timeframe.

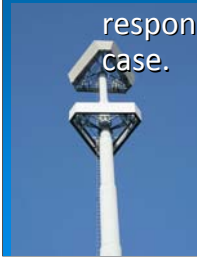
Moreover, the evidence submitted by local governments indicates that most already are processing applications within 90 and 150 days.

Accordingly, the draft Declaratory Ruling before you establishes that 90 days is presumed to be a reasonable time within which State and local authorities should act on collocation applications and 150 days is presumed reasonable for all other tower siting applications.

Once these timeframes have expired and an application has not been acted upon, a siting applicant may file a claim in court.

Courts To Consider All Facts

- If State and local governments have not decided wireless facility siting applications within those timeframes, then applicants can file a claim in court.
- State or local governments will have the opportunity to respond, and the court can consider all the facts in a specific case.



After the expiration of the timeframe, an applicant will be able to have its day in court if a State or local government has not acted upon the application, and State and local governments will have the opportunity to rebut the presumption that the timeframe was reasonable based on the specific facts of the application. The court will then fashion the appropriate case-specific remedy.

The draft item would not deem any application granted without a court hearing, nor would it establish any presumption in favor of any type of relief.

The Petition filed by CTIA also requests that the Commission clarify that applications for wireless facilities may not be denied solely because one or more carriers already serve a given geographic market. The draft Declaratory Ruling states that denying an application solely because one or more carriers already serve the area has the impermissible effect of prohibiting the provision of services. Consistent with the pro-competitive goals of the Act, the presence of one provider does not permit States and localities to exclude the networks of other providers.

The Petition also seeks preemption of all State and local ordinances that treat every wireless facility siting request as requiring a variance. Because the Petitioner does not provide evidence of any specific controversy, the draft Declaratory Ruling does not reach the issues raised by this request.

The Bureau recommends adoption of the draft Declaratory Ruling and requests editorial privileges.